

Before the
Administrative Hearing Commission
State of Missouri



ANGELA D. RICKABAUGH,

Petitioner,

vs.

DIRECTOR OF INSURANCE,
FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION,

Respondent.

No. 06-1543 DI

DECISION

Angela D. Rickabaugh is entitled to a non-resident insurance producer license. We order the Director of Insurance, Financial Institutions and Professional Registration ("Director") to issue the license to Rickabaugh.

Procedure

The Director denied Rickabaugh's application for a non-resident insurance producer license. Rickabaugh appealed. We held a hearing on July 20, 2007. Rickabaugh appeared on her own behalf. Tamara Wallace represented the Director. The case became ready for our decision when the Director filed his reply brief on November 2, 2007.

Findings of Fact

1. In 2001, Rickabaugh held an insurance producer license from the State of Illinois ("Illinois license").

2. During 2001, Rickabaugh gambled excessively and took an over-the-counter stimulant, ephedrine, excessively so that she could continue her gambling activities along with performing her job and family responsibilities.

3. In 2001, Rickabaugh and another person fabricated two insurance claims to the Cincinnati Insurance Company and fabricated one insurance claim to the Selective Insurance Company. The Cincinnati Insurance Company granted the claims and issued two checks, one for \$1,401.61 and the other for \$2,351.13. The Selective Insurance Company granted the claim and issued a check for \$2,242.59. Rickabaugh kept the money from all the checks.

4. On July 13, 2001, Rickabaugh began taking steps to curb her gambling and executed a voluntary self eviction request, banning her from all Illinois riverboat casinos. Rickabaugh joined Gamblers Anonymous.

5. On January 12, 2002, the Director of the Illinois Division of Insurance ("Illinois Director") issued an "Order of Revocation" against Rickabaugh's Illinois license for her conduct involving the fraudulent claims.

6. Rickabaugh asked for a hearing on the matter. By letter to Illinois Division of Insurance Examiner, Jamie Tripp, dated February 8, 2002, Rickabaugh admitted her misconduct regarding the fraudulent claims, but asked for leniency because she was making restitution and was taking meaningful steps to curb her gambling and consumption of ephedrine.

7. Rickabaugh obtained promissory notes to repay the entire amount of the checks that the insurance companies had issued to her. By the time of the Illinois Division of Insurance's revocation hearing, she had begun repayments.

8. A hearing officer from the Illinois Division of Insurance held a revocation hearing on August 28, 2002.

9. On January 5, 2003, the hearing officer found that the evidence sustained the allegations made in the order of revocation. Accordingly, he found that Rickabaugh attempted to defraud the two separate insurance companies on three separate occasions and that such constituted fraud under Section 500-70(a)(7) of the Illinois Insurance Code. He recommended that the order of revocation be affirmed.

10. On January 17, 2003, the Illinois Director issued an order in which he adopted the findings of fact, conclusions of law, and recommendations of the hearing officer. The Illinois Director ordered Rickabaugh's Illinois license revoked.

11. Rickabaugh completed her repayment of the funds fraudulently received.

12. In January 2004, Rickabaugh began employment at the Charles L. Crane Agency Company ("the Crane Agency") in St. Louis, Missouri, a company of insurance agents and brokers. She is still employed there.

13. On February 2, 2006, Rickabaugh applied to the Illinois Division of Insurance for reinstatement of her Illinois license. She had completed pre-licensing requirements and passed the licensing examination. She accompanied her application with a copy of her 2002-2003 license revocation proceedings.

14. The Illinois Division of Insurance reinstated Rickabaugh's Illinois license.

15. On February 17, 2006, Rickabaugh's husband died unexpectedly at home, leaving her the sole provider of two children. The time after her husband's death was particularly stressful for her because he had no will and was the only person in their family who handled all the family finances. Rickabaugh had to take over much that she was unfamiliar with.

16. On May 30, 2006, Rickabaugh filed an application with the Missouri Department of Insurance for a non-resident insurance producer license in the property and casualty lines of insurance. Rickabaugh is a resident of Illinois.

17. At the Crane Agency, any employee applying for an insurance producer license completes the first page of the application and one of the staff, Vicki Weingand, completes the last three pages. Rickabaugh's application was completed in this manner.

18. Page 3 comprises the section of the application entitled "Background Information." This section contains eight questions about criminal charges, professional or occupational licensing problems, personal finances, delinquent taxes, civil lawsuits, business disputes, and child support obligations. Each question is followed by the words "Yes" and "No," with spaces following each word for the applicant to mark his or her answer.

19. Question 2 under the background information section asks:¹

Have you . . . ever been involved in an administrative proceeding regarding any professional or occupational license?

"Involved" means having a license censured, suspended, revoked, canceled, terminated "Involved" also means being named as a party to an administrative . . . proceeding which is related to a professional or occupational license. . . .

If you answer yes, you must attach to this application:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
- b) a certified copy of the Notice of Hearing or other document that states the charges and allegations, and
- c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

20. Weingand marked "No" to all of the questions under background information, including Question 2.

21. On page 4, under "Applicants [sic] Certification and Attestation," the form provides seven certifications and other statements below which the applicant must sign. The first certification provides:

¹Resp. Ex. 1 at 3.

40. The Applicant must read the following very carefully:

1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.^[2]

22. Weingand gave the portion of the application that she had completed to Rickabaugh and asked her to review and sign it. Rickabaugh signed the certification, dated May 25, 2006, without reviewing the Background Information section. Rickabaugh's failure to review the application was careless, but she did not intend to supply false or misleading information in answer to Question 2.

23. By letter dated June 12, 2006, a special investigator for the Missouri Department of Insurance informed Rickabaugh that a review of her application showed that she failed to disclose that her producer's license was revoked by the State of Illinois. The investigator requested a certified copy of the Illinois revocation and the details of the events that led to the revocation.

24. On September 21, 2006, the senior counsel for the investigations section of the Division of Consumer Affairs submitted a petition to the Director alleging cause for refusing Rickabaugh's application.

25. On September 26, 2006, based on his review of the petition and the investigative report, the Director found that Rickabaugh "intentionally provided materially incorrect, misleading, incomplete and untrue information on her license application by failing to disclose the revocation of her Illinois insurance producer license, a ground for refusal under Section

²Resp. Ex. 1 at 4.

375.141.1(1) & (8) RSMo Cum Supp 2005.”³ The Director also denied Rickabaugh’s application under § 375.141.1(9)⁴ because Illinois had revoked her insurance producer license on January 17, 2003.

Conclusions of Law

We have jurisdiction to hear Rickabaugh’s complaint under § 375.141.2. Rickabaugh has the burden of proving that she is qualified for the license.⁵ Due process requires notice of the cause for denial. When the licensee files the complaint, the Director’s answer provides such notice.⁶

The Director asserts that Rickabaugh’s conduct of defrauding insurers in Illinois, the revocation of her Illinois license, and her failure to include the Illinois revocation on her application are cause for discipline under § 375.141.1(1), (8), and (9).

Section 375.141 provides:

1. The director may . . . refuse to issue . . . an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, . . . revoked in any other state[.]

Resp. Ex. 3 at 2. In his answer, the Director asserts only § 375.141.1(1), not subdivision (8), as allowing denial for the intentional provision of false information.

⁴Statutory references are to RSMo Supp. 2006 unless otherwise noted.

⁵Section 621.120, RSMo 2000.

⁶*Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984), and 1 CSR 15-3.380(2)(E).

The statute's use of the term "may" indicates that it does not require the denial of an insurance producer license if one or more of the listed causes apply to a particular applicant. The law gives the Director discretion as to whether the circumstances call for granting or denying the application.⁷ We have the same degree of discretion as the Director, and we need not exercise it in the same way.⁸

I. Intentionally Providing Materially
Incorrect or Untrue Information

Rickabaugh admits that her "No" answer to Question 2 of the background information section of the application was incorrect because Illinois had revoked her Illinois license in 2003. "Material" means "having real importance or great consequences[.]"⁹ There is no dispute that such information has "real importance" to the Director's discretion on whether to grant Rickabaugh a Missouri insurance producer license. The issue is whether Rickabaugh intentionally answered "No."

"Intentionally" means to act by intention or design.¹⁰ "Intention" means "a determination to act in a certain way."¹¹ We believe Rickabaugh's testimony that she did not intend to answer Question 2 falsely, but rather that she failed to review the answer that Weingand marked. We base this credibility determination on the sincerity of her testimony and demeanor at the hearing and on her past pattern of openness with the Illinois insurance authorities about the fraudulent insurance claims, both during the Illinois revocation proceedings and when she filed for reinstatement. Her consistent pattern of conduct from July 2001 until her application for reinstatement in 2006 has been to eliminate the gambling and stimulant abuse habits that

⁷*State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).

⁸*Id.* at 614-15.

⁹MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 765 (11th ed. 2004).

¹⁰*Id.* at 651.

¹¹*Id.*

contributed to her misconduct, to make amends to the wronged parties, and to cooperate with the regulatory authority. We do not excuse Rickabaugh's carelessness in signing the certifications without review and do not believe that the recent death of her husband – with its attendant emotional and practical difficulties – excuses her carelessness. However, we find that Rickabaugh's answer to Question 2 was not intentionally false.

The Director accepted the recommendation of his subordinate and decided that Rickabaugh intentionally answered Question 2 falsely. However, a more fully informed determination of a person's intent is based upon that person's personal testimony and demeanor, as well as on the circumstances of the conduct. We had the advantage that the Director did not, that is, to see and hear Rickabaugh testify and to consider such in addition to the past circumstances. It is our obligation to determine the facts from the evidence at our hearing independently of the agency's prior determination.¹² There is no cause to deny Rickabaugh's Application under § 375.141.1(1) because she did not intentionally provide a false answer to Question 2.

II. Fraudulent and Dishonest Business Conduct and the Revocation of Rickabaugh's Illinois License

Rickabaugh does not dispute that her fraudulent claim activity in 2001 falls within the conduct described as a cause for denial in § 375.141.1(8) or that her 2003 Illinois revocation qualifies as a cause for denial under § 375.141.1(9). We agree with the Director that such facts represent serious factors that go directly to the qualifications of an applicant for a Missouri insurance producer license. These factors go not only to the moral character of the applicant, but also to maintaining the public's faith in the integrity of the licensing application process.

¹²*Finch*, 514 S.W.2d at 614-15.

Nevertheless, Rickabaugh asks that we consider her to have rehabilitated herself in a process that began in July 2001, before her fraudulent conduct was discovered and continued through the present. We may consider rehabilitation as a reason for granting an application for licensure despite there being facts that could serve as cause for denial.¹³ A rehabilitant should at least acknowledge guilt and embrace a new moral code.¹⁴ Rickabaugh testified to the early acknowledgment of her guilt and her adoption of a new moral code. Rickabaugh also testified that her rehabilitation continues to the present. The character reference from her present employer, who was informed as to her misconduct in 2001, corroborates that Rickabaugh is “an intelligent, competent individual with strong moral character.”¹⁵

We believe Rickabaugh’s testimony that she has been and still is rehabilitated from her previous fraudulent conduct and that her misconduct and her Illinois revocation should not stand as causes to deny her application.

The purpose of the licensing laws is to protect the public, not to punish the licensee.¹⁶ We take seriously the Director’s concern that the public have faith that the licensing process protects the public’s interest in having not only competent, but honest, licensees. Nevertheless, the public must have faith in the legal integrity of that process as well. We have a legal duty to exercise the discretion that the law gives us in a reasonable fashion, which involves a thoughtful consideration of an applicant’s rehabilitation evidence and our acceptance or rejection of it with publicly stated reasons.¹⁷ This decision shows that we exercised our discretion with a view to

¹³ *Finch*, 514 S.W.2d at 616-17.

¹⁴ *Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

¹⁵ Letter from R. Christopher Imbs, Chairman of the Board, Charles L. Crane Agency, in Petitioner’s Exhibit D. Although the letter is dated February 2, 2005, we conclude that it is a typographical error for 2006 because the text of the letter references the application for reinstatement in Illinois, which was filed February 2, 2006.

¹⁶ *State Bd. of Regis'n for the Healing Arts v. Boston*, 72 S.W.3d 260, 264-66 (Mo. App., W.D. 2002).

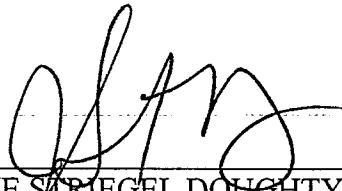
¹⁷ *Finch*, 514 S.W.2d at 616-17; *Francois*, 880 S.W.2d at 603.

protecting the public and based on evidence and articulated reasons. We find no cause to deny Rickabaugh's application under § 375.141.1(8) or (9).

Summary

Rickabaugh has shown that she is entitled to a non-resident insurance producer license. We grant her application and order the Director to issue the license to her.

SO ORDERED on November 21, 2007.



JUNE STRIEGEL DOUGHTY
Commissioner